

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G. O. Rt. No. 44/AIL/Lab./J/2010, dated 4th March 2010)

## NOTIFICATION

Whereas, the Award in I.D. No. 12/2005, dated 18-11-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Hydraulics Private Limited, Puducherry and Thiru P. Chittibabu - over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the Notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

**G. MALAR KANNAN,**

Joint Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PONDICHERRY

*Present :* Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court.

*Wednesday, the 18th day of November 2009*

## I.D. No. 12/2005

P. Chittibabu, S/o. Pavadaisami,  
No. 36, Bharathi Mill Thittu,  
Cuddalore Salai,  
Mudaliarpeta, Pondicherry-4 . . . Petitioner

*Versus*

The General Manager,  
Hydraulics Private Limited,  
(Presently known as Tenneco  
RC India Private Limited),  
Mettupalayam, Pondicherry-605 009 . . . Respondent

This industrial dispute coming on 17-11-2009 for final hearing before me in the presence of the Thiru S. Muthu, representative for the petitioner and Thiru K. Babu,

Advocate for the respondent, upon hearing both sides and perusing the case records and having stood over for consideration till this day, this court delivered the following:

## AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No. 173/2004/Lab./AIL/J, dated 31-12-2004 for adjudication of the following industrial dispute that arose between the management of M/s. Hydraulics Private Limited and its workman Thiru P. Chittibabu over his non-employment :

(a) Whether the non-employment of Thiru P. Chittibabu by the management M/s. Hydraulics Private Limited, Pondicherry is justified or not ?

(b) To what relief, he is entitled?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has averred as follows :

The case of the petitioner is that he joined the respondent company as Operator Trainee on 15-11-1997 and continued for a year and then he worked as Casual Labour for 1½ years and then he appointed as Probationary Worker on 15-4-2000. Though the petitioner was not a member of the Trade Union, he joined in the agitation called for by the Trade Union and involved in stay in strike due to which he arrested by the police along with other workers and from that day onwards the company stopped functioning. The further case of the petitioner is that on 4-12-2001 he was issued with a charge sheet-*cum*-suspension order informing him that the company was closed from 22-11-2001 and he also gave a reply to the management stating that he had not involved in any offence. The petitioner would submit that the respondent company has no Standing Order and that the Central Model Standing Order has been applied to suspend him was not correct and moreover the closure of the company without obtaining requisite permission from the concerned authorities is also not proper. It is further submitted that on 3-5-2002 the petitioner received the letter from the respondent company informing that he was terminated from service. Such termination

without any enquiry is illegal and the petitioner also refused to receive the salary offered by the management. It is also his case that the incident occurred on 21-11-2001 but the charge sheet has been issued to him belatedly on 4-12-2001 and without any enquiry the petitioner was terminated from service on 3-5-2002. This would only indicate that it is the act of victimisation against the provisions of the Industrial Dispute Act and the Central Model Standing Orders and Rules. After reopening of the respondent company in January 2003, the petitioner approached the respondent company for employment, but he was refused entry into the respondent company and was advised to approach the management through Union and not as individual. Finally on 29-8-2003 the petitioner sent letter to the respondent stating that he was not a member of the Trade Union and asked the respondent to offer him job within 15 days for which there was no reply from the management. On 20-10-2003 the petitioner approached the Labour Officer (Conciliation) to whom the management gave a reply containing false averments. Moreover under the Central Model Standing Orders probation was recommended only for three months, whereas the petitioner was kept as a probationer for more than a year which is not correct. Hence the petitioner has sought for reinstatement in service with back wages and continuity of service or in the alternative to give him compensation in the form of salary calculated till his age of 58 years.

3. *Per contra*, the respondent filed counter statement stating that the respondent company was established in the year 1995 and commenced its production activity in the year 1996. The respondent company is engaged in the manufacturing of various types of automation shock absorbers which involves highly technical, complicated and logistic control and the workmen are given in depth training in various machines, so that they would be able to operate all machines and do not specialised on a particular machine. As there are no Trade Apprentices for Shock Absorber Industry, the respondent company appointed individuals as trainee so that after completion of training period, the trainee can be examined on the suitability to learn and assimilate the highly skilled process of manufacture of shock absorbers and in this view the petitioner was also engaged as a trainee *vide* appointment letter, dated 27-11-1997 initially for a period of six months from 15-11-1997 to 15-5-1998 and again on 14-5-1998 the

traineeship was extended for another six months on an enhanced stipend with the consent of the petitioner so as to enable the petitioner to acquire further skill and knowledge. After completion of training period, the petitioner was appointed as Probationer for a period of 12 months from 15-4-2000 and during the probation period it was found that the petitioner required some more guidance and support to attain the satisfactory level of work and progress which are vital for the job. While so, on 21-11-2001 the petitioner was found engaged in illegal act of wrongfully confining the management staff and other staff members and he was arrested by the police and a criminal case is pending against him. Further the petitioner has been prevented by an order passed in I.A. No. 3500 of 2001 in O.S. No. 462 of 2001 on the file of the Additional Sub-Judge, Pondicherry restraining him from preventing the executives and the staff of the respondent company from having ingress and egress of the company. Since the petitioner did not show any interest in learning the job which require highly technical knowledge for operating machines, the respondent company terminated his services during the probation period *vide* letter, dated 3-5-2002. Though terms of employment does not provide for any notice pay, the respondent management took a lenient view and paid the notice pay to the petitioner and settled the amount due to him. It is contended that the petitioner is only a Probationer governed by the terms and conditions and he is not a regular worker and therefore his claim of alleged non-employment does not arise and the claim of the petitioner is devoid of merits and hence prayed for dismissal of the claim petition.

4. Now the point for determination is:

Whether the petitioner is entitled for the relief as claimed by him?

5. *On the point :*

Both sides adduced no oral evidence. On the side of the petitioner Exs. P1 to P9 and on the side of the respondent Exs. R1 to R14 have been marked by consent.

6. It is the case of the petitioner that he joined the services of the respondent company as an Operator Trainee on 27-11-1997 *vide* Training Order under Ex. P1. Initially the training was for a period of six months which was subsequently extended for a further period of six months *vide* Order Ex. P2, dated 14-5-1998. Thereafter he was appointed as Casual Labour and he worked as such for 1½ years and thereafter as per

Ex. P3 he was appointed as a Probationary Worker from 19-4-2000 and while he was working as such there was some labour problem in the company and on the basis of the police complaint given by the respondent company, the petitioner was arrested by the police on 21-7-2001 and on 4-12-2001 he was issued with charge sheet - *cum* - suspension order - Ex.P4 following which by a letter, dated 3-5-2002 - Ex.P5, the petitioner was terminated from service. On the other hand the respondent would state that the petitioner was appointed as a trainee on 15-11-1997 *vide* Order Ex. R1 and the training period was six months and that the training period was extended for another six months by an Order Ex.R2. Thereafter he was appointed as a Probationary Worker with effect from 15-4-2000 on consolidated wage of Rs. 50 per day for a period of 12 months as per the Order, dated 19-4-2000 marked as Ex.R4. Therefore, as per Ex.R4 the appointment of petitioner is Probationary Worker and it was ended on 15th April 2001. An untoward incident said to have been taken place in the respondent factory on 21-11-2001 and ultimately the petitioner was arrested by the police following the complaint given by the respondent management stating that the petitioner has indulged in preventing the workers from going for work. At this juncture it has to be seen that the appointment of the petitioner as Probationary Worker expired by 15-4-2001 whereas the incident occurred on 21-11-2001 *i.e.*, seven months after the petitioner has completed his service as Probationary Worker. The respondent management has not produced any document to show that the probation of the petitioner was extended beyond the period of one year. Therefore it would only indicate that the petitioner was in the regular employment of the respondent company as stated by the petitioner. If at all the petitioner was in employment as Probationary Worker at the time of his arrest by the police, it is the bounden duty of the respondent to establish the same through authenticated office records. Therefore, this court is not inclined to accept the respondent's case that the petitioner was only a Probationary Worker at the time of his arrest or at the time of termination of service. It has to be seen that the respondent company issued charge sheet and suspension order on 14-12-2001 wherein it has also informed that the company was closed from 22-11-2001 without conducting any domestic enquiry or even before the disposal of the criminal case against the petitioner, the respondent company has terminated the service of the petitioner. Therefore, it is clear that the respondent company has

not applied the principles of natural justice and it has acted arbitrarily only with an aim to victimise the petitioner. Therefore, this court finds that there is no justification in the termination of service of the petitioner and the petitioner's removal from service is not justified. Undoubtedly the petitioner termination of service of the petitioner and the petitioner's removal from service is not justified. Undoubtedly the petitioner is a worker governed by the Industrial Dispute Act and therefore this court has no hesitation to order for the reinstatement of the petitioner in service in the position in which he worked prior to his dismissal from service. The documents marked as exhibits on the side of the respondent are not helpful in establishing the case of the respondent.

7. The learned counsel for the respondent has cited the following rulings reported in :—

1. 2002 II LLJ-813 (S.C.) between Shailaja Shivajirao Patil and President Hon. Khasdar UGS Sanstha and Others. – Wherein the Hon'ble Supreme Court held that mere ordering of enquiry does not make termination penal or stigmatic when the petitioner's service was terminated during probationary period for unsatisfactory service.

2. 2002 I LLJ - 690 (S.C.) between Pavendra Narayan Verma and Sanjay Gandhi P. G. Institute of Medical Sciences and Another. – In this case the Hon'ble Apex Court has held that "Whenever a probationer challenges his termination the Court's first task will be to apply the test of stigma or the 'form' test. If the order survives this examination the 'substance' of the termination will have to be found out."

3. 2001 I LLJ -1346 (S.C.) between Kalyani Sharp India Ltd. and Labour Court No. 1, Gwalior and Another. – In this case the Hon'ble Apex Court has held that "Termination of service before expiry of the probation period question of issue of notice before terminating the service did not arise."

4. 1998 I LLJ - 1074 (S.C.) between Oswal Pressure Die Casting Industry, Faridabad and Presiding Officer and Another. – In this case the Hon'ble Supreme Court held that "Termination of service - Assessment made by the employer of performance of employee supported by some material and non *malafide* - Not proper for High Court to interfere and substitute its satisfaction to that of employer."

5. 2000 - II - LLJ -779 (H.P.) between Managing Director, H.R.T.C. and Another and Pratap Singh and Another. – In this case the Hon'ble High Court of Himachal Pradesh has held that “the termination of the workman by the petitioner after making overall assessment was legal and justified. It was not proper for the Labour Court to interfere and substitute its satisfaction with the satisfaction of the employer. The order of Labour Court was wrong and set aside.”

6. 2002 - I - LLJ 329 between Divisional Controller, K.S.R.T.C. and C.R. Kuppalli and Another.– Wherein the Hon'ble High Court of Karnataka held that “No employer would desire to do away with the services of an employee if he was satisfied with his performance.”

7. 2002 III LLJ -29 between Manipal Academy of Higher Education and Another and R. Swaminathan and Another. – In this case the Hon'ble High Court of Karnataka held that “During probation period if the work and conduct of the respondents were found satisfactory, they would be confirmed, otherwise their service were liable to be terminated.”

8. 2001 II LLJ -44 - Between Murari Lal Sharma and State Bank of India. – In this case the Hon'ble High Court of Rajasthan held that employer has every authority to terminate probationer's services if probationer's services found not satisfactory.

9. AIR 2005 S.C. - 2960- State of Punjab and others Vs. Sukhwinder Singh.- Wherein the Hon'ble Apex Court held that “Probationer - Termination of service - Ground of absence from duty - Order passed without any formal departmental inquiry or any preliminary fact-Finding inquiry - Not illegal”.

10. 2005-Lab. I.C. (S.C.) 4215 in State of Haryana Vs. Satyender Singh Rathore. – In this case the Hon'ble Apex Court held that “Misconduct referred to was motive and not foundation - It is case of termination simpliciter - Does not involve civil consequences - Principles of natural justice not required to be complied with.”

11. 2006 -Lab. I.C.(Mds.) - 782 - Bharat Petroleum Corporation Ltd. Vs. D. Nagendra. – In this case the Hon'ble High Court of Madras held that “Termination of services - Probationer - Condition incorporated in Cl. 4(c) of appointment order that his services would automatically be terminated without notice on expiry

of probation period unless confirmed - Delinquent completing one year of probation - Admittedly there was no confirmation in writing - Order of termination on basis of careful review of work which was found to be unsatisfactory - is legal.”

8. The Rulings cited by the learned counsel for respondent mainly relating to a person on probation and they are not applicable to the facts and circumstances of the present case since this court has held that the petitioner has completed the period of probation as on the date of his termination of service.

The learned counsel for the respondent has also cited one more decision reported in —

2003 - Lab I.C. (S.C.) - 745 - The Commissioner of Police, Hubli and Another Vs. R.S. More.

In the above case the Hon'ble Supreme Court of India based on the provisions contained in the relevant Service Rules held that the probationer shall not be entitled to be deemed to have satisfactorily completed probation by reason of his being continued in service beyond extended period of probation and the order discharging him from service is not improper. But in this case the respondent has not produced any documentary proof to show that even after the expiry of the period of probation, the petitioner shall not be deemed to have completed the period of probation unless it is confirmed in writing by the employer. Therefore, in the absence of enabling provisions in the Service Rules of the Respondent management, the petitioner shall be deemed to have completed the period of probation on the date of the probation period came to an end, without waiting for an order of confirmation in writing. Therefore, the above decision relied upon by the learned counsel for the respondent is not applicable to this case.

This point is answered accordingly.

9. In the result petition is allowed. The respondent company is hereby directed to reinstate the petitioner in the company within three months from the date of this Award and the petitioner is entitled for back wages only from the date of reopening of the respondent company. No cost.

Typed to my dictation corrected and pronounced by me in the open court on this the 18th day of November, 2009.

**E.M.K.S. SIDDHARTHAR,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Puducherry.

*List of witnesses examined for the petitioner :*

Nil

*List of witnesses examined for the respondent :*

Nil

*List of exhibits marked for the petitioner :*

- Ex. P1 6-2-2007 Copy of the Training Order, dated 27-11-1997.
- Ex. P2 6-2-2007 Copy of the Training Extension Order, dated 14-5-1998.
- Ex. P3 6-2-2007 Copy of the terms and conditions of service for a Probationary Worker issued by the respondent company to the petitioner on 19-4-2000.
- Ex. P4 6-2-2007 Copy of the charge sheet-cum-suspension order, dated 4-12-2001.
- Ex. P5 6-2-2007 Copy of the letter, dated 3-5-2002 by the respondent company to the petitioner.
- Ex. P6 6-2-2007 Copy of the letter by the petitioner to the respondent, dated 29-8-2003.
- Ex. P7 6-2-2007 Copy of the letter, dated 20-9-2003 by the respondent company to the petitioner.
- Ex. P8 6-2-2007 Copy of the Report of Failure of Conciliation, dated 23-4-2004.
- Ex. P9 6-2-2007 Copy of the notification by the Labour Department in G.O. Rt. No. 173/2004/Lab./AIL/J, dated 31-12-2004.

*List of exhibits marked for the respondent :*

- EX. R1 17-11-2009 Copy of the training order of the petitioner, dated 27-11-1997.
- Ex. R2 17-11-2009 Copy of the Training Extension Order, dated 14-5-1998.

- Ex. R3 17-11-2009 Copy of the Training Programme issued by the respondent company.
- Ex. R4 17-11-2009 Copy of the appointment order of the petitioner, dated 19-4-2000.
- Ex. R5 17-11-2009 Copy of the letter dated 3-5-2002 by the respondent company to the petitioner.
- Ex. R6 17-11-2009 Reply by the respondent to the Labour Officer, Pondicherry.
- Ex. R7 17-11-2009 Copy of the Report of Failure of Conciliation, dated 23-4-2004.
- Ex. R8 17-11-2009 Copy of the notification by the Labour Department in G.O. Rt. No. 173/2004/Lab./AIL/J, dated 31-12-2004.
- Ex. R9 17-11-2009 Copy of the letter, dated 10-4-2002 by the respondent company to the petitioner.
- Ex. R10 17-11-2009 Copy of the letter, dated 4-12-2001 by the respondent company to the petitioner.
- Ex. R11 17-11-2009 Copy of the letter by the petitioner to the respondent.
- Ex. R12 17-11-2009 Copy of the letter by the petitioner to the Conciliation Officer.
- Ex. R13 17-11-2009 Copy of the F.I.R in Cr. No. 231/2001 of Mettupalayam Police Station, Pondicherry.
- Ex. R14 17-11-2009 Copy of Certificate of Incorporation consequent on change of name of the respondent company.

**E.M.K.S. SIDDHARTHAR,**  
 II Additional District Judge,  
 Presiding Officer,  
 Labour Court, Puducherry.